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**IN THE  
COURT OF APPEALS OF INDIANA**

ANDRE L. PHINISEE,  
Appellant-Defendant,

VS.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 49A04-0604-CR-222

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Nancy Broyles, Commissioner  
Cause No. 49G05-0508-FC-29214

**January 25, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Andre L. Phinisee appeals his convictions after a jury trial of intimidation<sup>1</sup> and attempted robbery.<sup>2</sup> He argues the State failed to prove beyond a reasonable doubt that he knowingly or intentionally furthered his co-defendant's actions and that he had the required state of mind to commit those crimes. The State provided sufficient evidence to sustain Phinisee's convictions, and we accordingly affirm.

### **FACTS AND PROCEDURAL HISTORY**

Jacob Watson, a certified mechanic, advertised his 1987 Oldsmobile Cutlass for sale for \$1,999.00. On February 21, 2005, Zarumin Coleman bought the Cutlass for \$1,300.00. The next day, Coleman called Watson to tell him the car had stopped running. Watson picked up Coleman and they drove to where the vehicle was parked. Watson determined a connecting rod had gone through the engine into the oil pan.

Coleman was upset and asked Watson to drive him to a relative's house. During that drive, Coleman telephoned someone he referred to as "Dre" and told him Watson was "going to make the deal right." (Tr. at 113.) When they arrived at their destination, Watson spoke with Coleman's mother over Coleman's telephone. Watson told Coleman and his mother he would not refund the money but would try to help Coleman get the car fixed.

While they were talking, Phinisee knocked on Watson's driver's side window. Watson did not respond. Phinisee opened the back driver's side door and got into the back seat. Watson told Coleman and Phinisee he was going to call the police if they did

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<sup>1</sup> Ind. Code § 35-45-2-1.

<sup>2</sup> Ind. Code § 35-41-5-1 (attempt); Ind. Code § 35-42-5-1 (robbery).

not get out of his car. Phinisee leaned up to Watson and said: “Call the police, this is Post Road, n\*\*\*\*r, we’ll kill you, we’ll leave you dead in a ditch and nobody will find you.” (*Id.* at 126.)

Coleman again asked Watson to refund his money, telling him Watson would have to kill him or he would kill Watson. Watson agreed to refund the money. Phinisee suggested Watson find an ATM and withdraw the money, but Watson told him an ATM would not give him that amount of money. Watson told them he banked at Key Bank, and Phinisee directed him to drive to the branch at 82<sup>nd</sup> and Allisonville Road. While en route, Phinisee told someone on the cell phone to meet him at the bank.

When Watson arrived at the bank Phinisee said “don’t try any stupid Billy the Kid shit telling the people in the bank that we’re robbing you or have them call the cops or anything like that.” (*Id.* at 142.) A blue Chevrolet occupied by a female was parked directly in front of the bank and, as Watson and Coleman went into the bank, Phinisee got into the blue Chevrolet.

When they approached the teller, Watson told her “these men are robbing me, call the police.” (*Id.* at 146-47.) Watson noticed the blue Chevrolet pulling away. He gave the license number to the teller, who gave it to the police. The police stopped the blue Chevrolet in a nearby parking lot.

### **DISCUSSION AND DECISION**

Phinisee contends the State did not prove he knowingly or intentionally furthered co-defendant Coleman’s actions.

We do not reweigh the evidence or judge the credibility of the witnesses when reviewing the sufficiency of the evidence. *Trotter v. State*, 838 N.E.2d 553, 557 (Ind. Ct. App. 2005). We examine the evidence most favorable to the judgment and all reasonable inferences to be drawn therefrom. *Id.* We will affirm a conviction when there is substantial evidence of probative value from which the trier of fact could find guilt beyond a reasonable doubt. *Id.*

To convict Phinisee of intimidation, the State had to prove Phinisee (1) communicated (2) to Watson (3) a threat to commit a forcible felony (4) with the intent that Watson engage in conduct against his will. Ind. Code § 35-45-2-1. Watson testified Phinisee threatened to kill him if he called the police. The threat came after Watson refused to refund the money Coleman paid for the car and Watson asked Coleman and Phinisee to get out of his car. This was sufficient evidence to support a conviction of intimidation.

To convict Phinisee of attempted robbery, the State had to prove Phinisee (1) knowingly (2) engaged in conduct that constituted a substantial step (3) toward the commission of a robbery. Ind. Code § 35-41-5-1; Ind. Code § 35-42-5-1. What is a substantial step must be determined from the facts and circumstances of each case, and the conduct must be strongly corroborative of the firmness of the defendant's intent. *See Hampton v. State*, 468 N.E.2d 1077, 1081 (Ind. Ct. App. 1984) (substantial step found when Hampton parked his car near a highway that would have provided an easy escape route, hid between bushes and the building attempting to avoid light from passing cars,

was armed and was wearing a ski mask, and knew the assistant manager of a nearby restaurant would be carrying a large amount of cash).

Phinisee demanded Watson drive to a bank to obtain money. That amounted to a substantial step in the completion of a robbery. Phinisee threatened Watson twice and told him where to drive to get the money for Coleman. This is sufficient evidence to support Phinisee's conviction of attempted robbery. *See id.*

Affirmed.

MATHIAS, J. and NAJAM, J. concur.